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May 4, 1988

John E. Dabuliewicz, Director
Office of State Planning
2 1/2 Beacon Street
Concord, NH 03301

Dear Mr. Dabuliewicz:

You have requested our opinion as to whether, having adopted the Basic Building Code (BOCA) established by the Building Officials and Code Administrators International, Inc., the State and localities are deemed also to have adopted subsequent amendments to that code. Further, you have asked whether the change in name of the BOCA to the National Building Code prevents the incorporation of the newly named code under the statute or ordinance referencing BOCA as amended.

We have determined that where a statute or ordinance clearly indicates that the BOCA be incorporated as amended, all subsequent modifications of that code have the force of law. Further, the change in the code's name is equivalent to an amendment of the code and, where the statute or ordinance otherwise provides for incorporation of amendments, the newly amended code may be deemed to be in effect.

The determination of whether a statute which adopts by reference another statute or regulation also adopts subsequent amendments to that referenced statute or regulation is fundamentally a matter of legislative intent. Attorney General v. Duncan, 76 N.H. 11 (1911), 168 ALR 628, 73 Am. Jur. 2d 284 (Statutes, Section 29). RSA 155-A:1 which requires that the BOCA be applied to all new state buildings explicitly manifests the legislative intent to incorporate as well all subsequent amendments to the BOCA:



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All new buildings constructed by the State ... shall conform to standards not lower than those of the BOCA Basic Building Code, as amended, as established by the Building Officials and Code Administrators International, Inc.

(Emphasis added.)

Although the statute incorporates by reference the Basic Building Code, the 1981 change in name to the National Building Code does not prevent the incorporation of the post-1981 code. The legislative intention is clear from the language of RSA 155-A:1 that construction standards implemented under the statute are to be those established by the Building Officials and Code Administrators International, Inc. So long as the standards are clearly identifiable, the specific name they are given is not important. The change in name may be deemed nothing more than a superficial amendment of that code which the statute by its terms incorporates and makes effective as law.

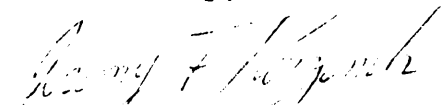
Although amendments to the BOCA are applicable to state construction through RSA 155-A:1, they are not necessarily incorporated into town building codes. RSA 674:52, I states as follows:

... a town is hereby authorized to adopt by reference as an ordinance the BOCA Basic Building Code, as amended, as established by the Building Officials and Code Administrators International, Inc.

This provision only gives towns authority to adopt by reference BOCA as amended, it does not on its own incorporate into local building codes all subsequent BOCA amendments. One has to look at the language of each town building code to determine if the ordinance explicitly provides for the incorporation of subsequent amendments.

I hope this answers your questions. If you should have any further questions, please do not hesitate to contact me.

Yours truly,



Jeremy F. Korzenik
Assistant Attorney General
Environmental Protection Bureau

JFK/mmp
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